IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 17, 2008

CLAY B. SULLIVAN v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Davidson County
No. 2001-D-2236 Cheryl A. Blackburn, Judge

No. M2007-02580-CCA-R3-PC - Filed December 3, 2008

A Davidson County jury convicted the Petitioner, Clay B. Sullivan, of especially aggravated robbery, a Class A felony; attempted second degree murder, a Class B felony; and facilitation of attempted voluntary manslaughter, a Class E felony. The trial court ordered the Petitioner to serve twenty-two years in the Tennessee Department of Correction ("TDOC"). We affirmed the Petitioner's convictions on direct appeal. The Petitioner then filed a post-conviction petition claiming he received the ineffective assistance of counsel at his trial. The post-conviction court denied relief, and the Defendant now appeals, claiming: (1) the post-conviction court erred in denying his claim that he received the ineffective assistance of counsel at trial; and (2) the post-conviction court erred in admitting the unauthenticated police report of Maurice Jackson's statement. After a thorough review of the record and applicable law, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and J.C. MCLIN, JJ., joined.

Ryan C. Caldwell, Nashville, Tennessee, for the Petitioner, Clay B. Sullivan.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Bret T. Gunn, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION
I. Facts
A. Trial and Sentencing

On direct appeal, this Court set forth the following factual summary:

This case involves the arrangement of a sham drug deal intended to result in the robbery and murder of Jeremy Dotson. Richard Bagby, a co-defendant charged in the case, testified that while at a party at the defendant's house on the evening of January 8, 2000, the defendant, Joel Teal, Lindsay Dachel, and Maurice Jackson voiced an interest in obtaining marijuana. Because no one had money to pay for the drugs, Dachel suggested that they call Jeremy Dotson to set up a drug deal and rob him. Dachel informed the group that if the plan was carried out, they would have to kill Dotson because he was a co-worker and would recognize Dachel.

After paging Dotson to set up a meeting with him, Teal, Jackson, and Dachel left armed with two sawed-off shotguns but returned unsuccessful one hour later after Teal recognized one of the individuals with Dotson and was unable to follow through. After "regrouping," Dachel again paged Dotson and set up a second meeting with him at the Waffle House on Bell Road. Thereafter, the defendant retrieved his mother's black nine-millimeter handgun and instructed Jackson to wipe the bullet casings off to remove any fingerprints. The defendant further informed Bagby that if he "pulled it off," he would become a member of their gang, dubbed "G.D."

Between 11:00 and 11:30 p.m., the defendant drove Bagby, Jackson, and Dachel to the arranged site, and the group decided that Jackson would be the gunman. Bagby particularly recalled that the defendant stated that the proceeds from the robbery would go to the gang. When they arrived at the Waffle House, Dachel spoke with Dotson, and they decided to move the deal to Dotson's apartment complex, a more secluded area. After following Dotson to Arbor Ridge Apartments, Jackson and Bagby got out of the vehicle with Bagby carrying a duffle bag full of towels, or "woo," for the purpose of imitating money used for the drug deal. When Dotson realized there were only towels in the bag, Jackson shot him and his passenger, Nathaneal Shearon. Jackson and Bagby took five pounds of marijuana from Dotson's truck, and the defendant drove the group back to his house to divide the drugs.

On cross-examination, Bagby acknowledged that he was indicted in the case and had not yet been tried. He further indicated that he had only known the defendant a few days and that he had been to the defendant's house once before the night of the incident. He stated that there were six or seven people at the defendant's party, including two girls who were not involved in the incident. Bagby stated that he smoked some marijuana and drank several Zimas, a malt liquor beverage, while at the defendant's house. On redirect examination, Bagby testified that the defendant did not go on the first trip to meet Dotson and did not get out of the car to talk to him at Waffle House. On recross-examination, he stated that the car did not belong to the defendant but had been rented by Teal.

Jeremy Dotson testified that Dachel called him on two occasions to set up a purchase of marijuana. He stated that on the first trip, between 8:00 and 9:00 p.m., there was no transaction because Dachel did not trust that he had five pounds of marijuana. Dotson further stated that Shearon accompanied him to the second meeting at Waffle House on Bell Road, where he and Dachel decided that the area was too crowded and opted to move the transaction to his apartment.

Dotson testified that the defendant drove the other three men to the apartment complex, where Jackson and Bagby exited the vehicle and approached. He stated that Jackson told him he was "dead" and shot him in the left shoulder with a nine-millimeter handgun. Dotson immediately jumped under his truck and "played [ ] dead," watching Jackson and Bagby take five pounds of marijuana, with a street value of between $4200 and $4300. As they left, Dotson ran toward his apartment and saw the defendant driving away. After searching for Shearon in the apartment, Dotson found him outside lying on the ground with two gunshot wounds to the abdomen.

Dotson testified that the shot to his shoulder ricocheted off of the bone and left a two-inch scar. He stated that he was treated at Vanderbilt Hospital; that he had to take pain pills immediately after the shooting; and that he continues to have pain if he "sleep[s] on it wrong." Dotson further noted that his arm was in a sling for some time and that he was unable to work for approximately three weeks. On cross-examination, Dotson testified that this was the only instance in which he has been involved in this type of transaction. He further acknowledged that he was not prosecuted for selling marijuana, and that he only observed the defendant driving the car.

Nathaneal Shearon testified that he went to a party at Dotson's home around 10:00 p.m. after leaving the Tennessee Titans "Music City Miracle" playoff game. At approximately 11:15 p.m., Dotson asked if anyone wanted to go to the Waffle House on Bell Road, and Shearon volunteered because he was hungry and ready to go home. While walking to the truck, Shearon learned that Dotson would be delivering marijuana to Dachel and accompanied him "kind of against [his] better judgment." As the two ordered food at the restaurant, the defendant drove up with Dachel, Jackson, and Bagby as passengers. After speaking with Dachel outside, Dotson came back into the restaurant and told Shearon that they would have to go back to the apartment.

Upon arrival at the complex, Dotson instructed Shearon to get out of the truck with him as Jackson and Bagby approached. After a brief conversation, Jackson told Shearon that he was "a goner" and shot him twice in the abdomen. Shortly thereafter, Dotson, who had also been shot, found Shearon lying on the ground and told him that

the police and paramedics had been called.

Shearon testified that he has a twelve-inch scar on his abdomen and that two bullets remain in his body. He indicated that he was able to pick Jackson out of a photo line-up and that he was "pretty sure" that he was shot with a black nine-millimeter handgun. On cross-examination, Shearon testified that he did not participate in the sale in any way. He stated that the parking lot was "pretty well lit" and that he only saw the defendant driving the vehicle. He further acknowledged that he was neither prosecuted nor called to testify on the drug charges.

Officer Michael Sanders testified that he responded to the scene and found Shearon lying on the ground near Building Sixteen with two gunshot wounds to the abdomen. On cross-examination, Officer Sanders testified that there was a second victim at the complex and that he requested medical attention for both victims. Upon a search of the area, he found a small package and several spent shell casings on the ground next to a silver truck. Detective William Stewart, the lead detective in the case, testified that Shearon was able to positively identify Jackson as the shooter from a photo lineup. Detective Joe Williams testified that he found shell casings on the scene and a tan plastic bag taped underneath the passenger side of Dotson's truck. On cross-examination, he acknowledged that he did not examine the contents of the package but speculated that it could have contained marijuana, cocaine, or "a number of things."

James Rottmund, supervisor of forensics and firearms for the Nashville Metro Police Department, was qualified as an expert in the field of firearms identification. He stated that an analysis of the pattern of scratches on the shell casings can determine whether they were fired from the same weapon. He further stated that he examined the seven nine-millimeter casings that were recovered from the scene and determined that all seven were discharged from the same gun. Following the presentation of proof, the defendant was convicted of facilitation of attempted voluntary manslaughter, attempted second degree murder, and especially aggravated robbery.

State v. Clay B. Sullivan, No. M2004-03068-CCA-R3-CD, 2006 WL 644021, at *1-3 (Tenn. Crim. App., at Nashville, Mar. 10, 2006), *no Tenn. R. App. P. 11 application filed*.

After a sentencing hearing the trial court found several enhancement factors applicable to each count and found no mitigating factors. The court accordingly enhanced the Petitioner's sentence for each count, sentencing him to a total of twenty-two years in the TDOC. However, in

a supplemental motion to his motion for a new trial, the Petitioner challenged the application of certain enhancement factors based on *Blakely v. Washington*, 542 U.S. 296 (2004). The trial court accordingly reduced the Petitioner's sentence to twenty years. However, on direct appeal this Court reinstated the original sentence of twenty-two years. *State v. Clay B. Sullivan*, No. M2004-03068-CCA-R3-CD, 2006 WL 644021 (Tenn. Crim. App., Mar. 10, 2006), *no Tenn. R. App. P. 11 application filed*.

B. Post-Conviction

At the hearing on the petition for post-conviction relief, the following evidence was presented: The Petitioner testified that he failed to receive the effective assistance of counsel from his trial counsel ("Counsel"). Specifically, the Petitioner said Counsel was ineffective because he failed to call to testify Maurice Jackson, who had already pled guilty to charges arising from his involvement as the triggerman in the shooting.[1]

The Petitioner testified that he discussed with Counsel the possibility of calling Jackson to testify at his trial. According to the Petitioner, Counsel told the Petitioner that he would call Jackson to testify. With respect to the Petitioner's involvement in the shooting, the Petitioner testified that he knew only that the group he drove to meet the victims intended to buy drugs. The Petitioner insisted he knew neither that there was a plan to rob the victims nor that any of his passengers, in particular Jackson, possessed a gun. The Petitioner stated that, had Counsel called Jackson to testify, Jackson would have told "the truth": the Petitioner did not know of plans to rob or kill the victims when he drove his co-defendants to meet the victims.

On cross-examination, the Petitioner explained that he had known Jackson "maybe a couple of months" before the shooting, which occurred when the Petitioner was seventeen-years old. He recounted that he and Jackson "got together and hung out and played video games and stuff like that." The Petitioner admitted that he and another co-defendant, Richard Bagby, falsely testified at Jackson's preliminary hearing that Jackson was not present at the shooting. Regarding whose idea it was to lie at the hearing, the Petitioner would say only that "somebody said, look, testify for Maurice to try to get him out of this." The Petitioner was charged with aggravated perjury for his conduct at Jackson's hearing. The Petitioner admitted that after Jackson's guilty plea he asked Jackson to testify at his trial: "I told him I think he should testify to the truth and what had happened in the case."

Maurice Jackson confirmed that he pled guilty to especially-aggravated robbery for his role as the triggerman in the shooting. Regarding his relationship with the Petitioner, Jackson said, "I've . . . know[n] him for a long time. It's just been so long I've been knowing him. It's just I done forgot really. I quit counting." He testified that Counsel never contacted him at any point. About the shooting, Jackson testified that he obtained the gun that he used "off the streets" and not from the

[1]We have omitted from these facts the testimony presented pertinent to allegations not maintained by the Petitioner on appeal.

Petitioner or the Petitioner's mother and that he kept the gun in his waistband, which was out of the Petitioner's view. He stated the Petitioner had no knowledge he carried a gun.

Jackson explained he did not recall whose idea it was to organize the drug transaction. Jackson insisted he intended only to buy drugs and that, accordingly, he carried with him $5,200, which he spent before being arrested. He testified he spent the money before the police could recover it. He testified the Petitioner drove the group to Waffle House but the Petitioner "didn't know what was going on." He said the group first met the victims at Waffle House but decided to relocate the transaction to a secluded parking lot because several police officers were near the Waffle House.

About what occurred when the group met the victims for the exchange, Jackson testified "[W]hen I got there, I was already on drugs. So I probably was just paranoid. But I seen one of the dudes reach, you know, it looked like he was reaching for something. And dealing with 5,000–you know, $5,000 or more on my person, I'm not [going] to let [any]body try to kill me over . . . $5,000." Jackson said he could not recall who retrieved the marijuana from the victims' vehicle after he shot the victims:

> See, all I know is I [saw] him reach. So I was scared. I pulled out and started shooting because I didn't want to get shot; okay? Now . . . after the shooting occurred, I ducked and went and jumped in the car. And now–and I didn't touch [any] marijuana . . . . I still had my money on my person, and I just know we got back to the house.

He testified that the Petitioner never exited the vehicle during the shooting. Jackson explained that, after the shooting, the group returned to the Petitioner's mother's house. Jackson stated that had he been called to testify at Petitioner's trial, he would have given a version of the events identical to that which he offered the post-conviction court. He also testified that no charges were pending against him and that no one had promised him anything in return for his testimony in the Petitioner's hearing.

On cross-examination, Jackson elaborated that he had known the Petitioner since he was fourteen years-old, which was three years before the shooting, and that he and the Petitioner were "practically family." Jackson testified he never asked the Petitioner to lie in his preliminary hearing and that he did not know of the Petitioner's intention to do so. Jackson explained that he was forcibly robbed during a drug exchange two or three months before the shooting and therefore was apprehensive of the victims' potential to steal his money. Jackson reiterated that the Petitioner was only the driver and never exited the vehicle during the shooting.

Jackson admitted making a statement to the police on January 19, 2000, but insisted he was under the influence of several drugs when he gave the statement. Referring to a copy of the report Detective Bill Stewart prepared of Jackson's statement, the State asked Jackson whether he gave the statements contained within the report. In summary, the State asked Jackson whether in 2000 he said

the shooting occurred as follows: Richard Bagby drove the group to the Waffle House, and Lindsey Dachel drove the party to the parking lot where the shooting occurred. While Jackson was still in the car, Joel Teal told Jackson the group was going to rob the victims and gave him a black pistol. Jackson never mentioned the Petitioner in the January 2000 statement. After being asked to confirm each detail, Jackson responded each time that he did not remember whether he gave the statement contained within the report. Jackson stated he was not as close to Teal, Dachel, and Bagby as he was to the Petitioner.

The Petitioner's trial counsel testified that, at the time of the hearing, Counsel had been licensed to practice law for thirty-four years and had worked in criminal defense his entire career. The Petitioner's mother retained him to represent Petitioner at trial. He testified that the Petitioner mentioned calling Maurice Jackson to testify but that he concluded that Jackson would not be beneficial to the Petitioner's case. Counsel testified that he spoke with the Petitioner about the possibility of calling Jackson to testify, and they "both felt that it was just too great a potential for just devastating danger."

Counsel testified that, had he known Jackson would at trial describe the shooting as he described it at the post-conviction hearing, he would absolutely not have called Jackson to testify at trial. Furthermore, he informed the court that at the time of trial he had a copy of the report of Jackson's January 2000 statement. Also, several police officers with whom Counsel was acquainted told Counsel that Jackson would not be a "responsive witness."

On cross-examination, Counsel explained that, although at the time of trial he knew Jackson had already pled guilty and had no pending charges, the inconsistency of his prior statement "was so devastating that it would just destroy him as a witness." Counsel reiterated that although Jackson had no present, apparent incentive to lie, the State's ability to impeach Jackson with his prior statement negated the value of his testimony: "[H]is case had been disposed of. But still when [the State's attorney] is sitting there with the statement given to the detective, I just felt that–that was just not in [the Petitioner's] best interest."

At the close of its case, the post-conviction court, over the Petitioner's objection, allowed the State to enter as an exhibit Detective Stewart's report of the statement Jackson gave to the police in January 2000.

After hearing argument, the post-conviction court entered a written order finding the Petitioner failed to prove Counsel was deficient. The post-conviction court denied the petition for post-conviction relief, and it is from this decision that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends the post-conviction court erred when it denied his petition because he received the ineffective assistance of counsel. Petitioner's bases his contention on Counsel's failure to call Maurice Jackson to testify. The State responds that Counsel properly chose

not to call Jackson because his decision was part of a reasonable trial strategy to avoid the introduction of impeachment evidence, which would have been harmful to the Petitioner's case.

In order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2006). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2006). Upon review, this Court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999); *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997). A post-conviction court's factual findings are subject to de novo review by this Court; however, we must accord these factual findings a presumption of correctness, which only be overcome when a preponderance of the evidence is contrary to the post-conviction court's factual findings. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court's conclusions of law are subject to a purely de novo review by this Court, with no presumption of correctness. *Id.* at 457. We will discuss each issue in turn.

A. Ineffective Assistance of Counsel

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

> First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).

In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Strickland*,

466 U.S. at 688 (1984)).

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland,* 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court must evaluate the questionable conduct from the attorney's perspective at the time. *Strickland,* 466 U.S. at 690; *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982). In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, "in considering claims of ineffective assistance of counsel, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (quoting *United States v. Cronic*, 466 U.S. 648, 665 n.38 (1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. *Williams v. State*, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). The fact that a particular strategy or tactic failed or hurt the defense does not, standing alone, establish unreasonable representation. *House*, 44 S.W.3d at 515 (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation. *House*, 44 S.W.3d at 515.

If the petitioner shows that counsel's representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694; *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994).

In the case under submission, the post-conviction court found Counsel's assistance was effective because it was a part of a reasonable trial strategy. In order for the Petitioner to prevail herein, he must show that the evidence adduced at the post-conviction hearing preponderates against the post-conviction court's finding that Counsel's failure to call Jackson to testify at trial was part of a reasonable, informed trial strategy based on adequate preparation. T.C.A. § 40-30-103; *Williams,* 599 S.W.2d at 279-80. The Petitioner must also show that Counsel's failure to call Jackson to testify resulted in prejudice. *Id.*

The Petitioner contends that Counsel should have called Maurice Jackson to testify at trial in order to offer proof that the Petitioner was only minimally involved in the shootings. At the post-conviction hearing, Jackson testified that, had he been called to testify in Petitioner's trial, he would have explained the Petitioner did not know Jackson would commit a robbery or a killing because Jackson himself did not know he would commit either act. However, Counsel testified that he knew the State had a copy of a statement given in 2000 wherein Jackson totally omitted the Petitioner's

involvement in his account of the shooting. Counsel explained that he believed the State's impeachment of Jackson would therefore both undermine Jackson's own testimony and damage the jury's perception of the Petitioner. Counsel testified that he accordingly chose to not call Jackson to testify on the Petitioner's behalf.

The Petitioner has failed to prove that Counsel was deficient. In this case, Counsel made a tactical decision to not call Jackson to testify. We will not second-guess this strategy. Further, the Petitioner has failed to show how Counsel's failure to call Jackson as a witness prejudiced him. The evidence supports the post-conviction court's finding that Counsel chose not to call Jackson as part of a reasonable trial strategy. Thus, we conclude the post-conviction court properly found the Petitioner received the effective assistance of counsel.

B. Admission of Report Containing Jackson's Previous Statement

Petitioner also contends the post-conviction court erred in admitting the unauthenticated police report of Jackson's testimony. The State disagrees. Following our review, we agree with the State.

Rule 901(a) of the Tennessee Rules of Evidence establishes that authentication or identification is a condition precedent to the admission of proffered evidence. Tenn. R. Evid. 901(a). Thus, the authentication rule requires evidence sufficient to support a finding "that the matter in question is what its proponent claims." Tenn. R. Evid. 901(a). We would reverse a trial court's order only if an error "affirmatively appear[s] to have affected the result of the trial on the merits." Tenn. R. Crim. P. 52(a); *see also* Tenn. R. App. P. 36(b) ("A final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process."). In determining whether error prejudiced a defendant, we consider the record as a whole, in particular: the substance of the evidence; the relationship of the proffered evidence to other evidence; and the particular facts and circumstances of the case. *State v. Cannon*, 254 S.W.3d 287, 299 (Tenn. Crim. App. 2008).

In the Petitioner's case, the State entered as an exhibit a report purportedly containing a statement Jackson gave to Detective Bill Stewart in January 2000. Earlier in the hearing, however, the State in cross-examining Jackson had read aloud the majority of the 2000 statement, which conflicted with the account of the shooting Jackson gave on direct-examination. Reading from the report, the State asked Jackson whether the account given in the report or the account given in the post-conviction hearing was accurate. At the close of the hearing, the trial court allowed the State to enter the report into evidence. Detective Stewart was not present at the hearing, and the report did not contain his supervisor's signature.

Rule 901(a) clearly contemplates that a party seeking to introduce a record of a witness's account must offer evidence that the record is accurate. In this case, Detective Stewart's testimony that Jackson gave the statement as it appeared in the report would have satisfied the authentication

requirement of Rule 901(a). Also, had Detective Stewart's supervisor signed the report, the report would have been admissible as a self-authenticating document under Rule 901(b) of the Tennessee Rules of Evidence. However, Detective Stewart's supervisor had not signed the report, and Detective Stewart did not testify at the post-conviction hearing. Therefore, the report was admitted in clear violation of Rule 901(a) of the Tennessee Rules of Evidence. However, its admission is not a basis for relief, because the Petitioner fails to show prejudice. By referencing large portions of the report in its cross-examination of Jackson, the State exposed the trial court to the contents of the report before entering it into evidence. We cannot say that, had the report not been introduced into evidence, a substantial likelihood exists that the result of the post-conviction hearing would have been different. The admission of the report gave the trier of fact no new information upon which to base its finding. Therefore, the erroneous admission of the report did not prejudice the Petitioner. The violation of Rule 901(a)'s authentication procedures was harmless, and the Petitioner is not entitled to relief.

III. Conclusion

After a thorough review of the record and applicable law, we conclude the Petitioner has failed to demonstrate that the post-conviction court erred when it denied his petition for post-conviction relief. Accordingly, we affirm the judgment of the post-conviction court.

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ROBERT W. WEDEMEYER